

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WENDELL PETTRY,

Plaintiff,

v.

Civil Action No. 5:06CV34
(STAMP)

DIANE SHINGLER, JAMES L. CHAPMAN
and JAMES RUBENSTEIN,

Defendants.

ORDER AFFIRMING REPORT AND
RECOMMENDATION OF THE MAGISTRATE JUDGE

On March 6, 2006, the plaintiff in the above-styled civil action filed a complaint under the Civil Rights Act for alleged discrimination and harassment in the Northern Regional Jail in Moundsville, West Virginia. On May 1, 2006, United States Magistrate Judge John S. Kaull entered a deficiency notice indicating that the plaintiff had failed to file a completed prisoner trust account report and that the Court was unable to determine the plaintiff's eligibility to proceed without prepayment of fees. Accordingly, Magistrate Judge Kaull ordered the plaintiff to submit a completed form within twenty days of the entry of the deficiency notice. On June 15, 2006, Magistrate Judge Kaull entered a report and recommendation indicating that the plaintiff had failed to respond to the deficiency notice and recommending that this civil action be dismissed without prejudice for failure to prosecute. To date, no objection has been filed to the magistrate judge's report and recommendation. Because no objection

has been filed and because this Court upon review of the record agrees that the plaintiff has failed to file the necessary forms or request an extension to proceed on this action, this Court hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge and the above-styled civil action is DISMISSED WITHOUT PREJUDICE for failure to prosecute.

It should be noted that because the plaintiff has failed to file a timely objection to the magistrate judge's report and recommendation, he has waived his right to appeal from the judgment of this Court based upon that recommendation. See Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).

The Clerk is DIRECTED to transmit a copy of this order to the plaintiff and to counsel of record herein.

DATED: July 31, 2006

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE